

RECORDATION NO. 11993 Filed 1425

JUL 11 1980 3 00 PM CRAVATH, SWAINE & MOORE

RECEIVED

INTERSTATE COMMERCE COMMISSION ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

212 HANOVER 2-3000

TELEX

RCA 233663

WUD 125547

WUI 620976

RECORDATION NO. 11993 Filed 1425

JUL 11 1980 3 00 PM

INTERSTATE COMMERCE COMMISSION

No.

Date JUL 11 1980

Fee \$ 200.00

ICC Washington, D. C.

RECORDATION NO. 11993 Filed 1425

JUL 11 1980 3 00 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 11993 Filed 1425

JUL 11 1980 3 00 PM

July 9, 1980

INTERSTATE COMMERCE COMMISSION

Seaboard Coast Line Railroad Company  
Reconstruction and Conditional Sale  
Financing Dated as of June 15, 1980  
12.5% Conditional Sale Indebtedness  
Due February 1, 1991

Dear Sir:

Pursuant to 49 U.S.C. § 11303(a), I enclose herewith on behalf of Seaboard Coast Line Railroad Company, for filing and recordation, counterparts of the following:

- (1) Reconstruction and Conditional Sale Agreement dated as of June 15, 1980, among Mercantile-Safe Deposit and Trust Company, as Agent, Seaboard Coast Line Railroad Company and Cargill Equipment Leasing Corporation;
- (2) Transfer Agreement dated as of June 15, 1980, between Mercantile-Safe Deposit and Trust Company and Cargill Equipment Leasing Corporation;
- (3) (a) Lease of Railroad Equipment dated as of June 15, 1980, between Seaboard Coast Line Railroad Company and Cargill Equipment Leasing Corporation;
- (b) Assignment of Lease and Agreement dated as of June 15, 1980, between Cargill Equipment Leasing Corporation and Mercantile-Safe Deposit and Trust Company; and
- (4) Hulk Purchase Agreement dated as of June 15, 1980, between Seaboard Coast Line Railroad Company and Cargill

MAURICE T. MOORE  
WILLIAM B. MARSHALL  
RALPH L. McAFEE  
ROYALL VICTOR  
HENRY W. OKOSMIAN  
ALLEN F. MAULSBY  
STEWART R. BROSS, JR.  
HENRY P. RIORDAN  
JOHN R. HUPPER  
SAMUEL C. BUTLER  
WILLIAM J. SCHRENK, JR.  
BENJAMIN F. CRANE  
FRANCIS F. RANDOLPH, JR.  
JOHN F. HUNT  
GEORGE J. OILLESPIE, III  
RICHARD S. SIMMONS  
WAYNE E. CHAPMAN  
THOMAS D. BARR  
MELVIN L. BEDRICK  
GEORGE T. LOWY  
ROBERT ROSENMAN  
JAMES H. DUFFY  
ALAN J. HRUSKA  
JOHN E. YOUNG  
JAMES M. EDWARDS  
DAVID G. ORMSBY

DAVID L. SCHWARTZ  
RICHARD J. HIEGEL  
FREDERICK A. O. SCHWARZ, JR.  
CHRISTINE BESHAR  
ROBERT S. RIFKIND  
DAVID BOIES  
DAVID O. BROWNWOOD  
PAUL M. DODYK  
RICHARD M. ALLEN  
THOMAS R. BROME  
ROBERT D. JOFFE  
ROBERT F. MULLEN  
ALLEN FINKELSON  
RONALD S. ROLFE  
JOSEPH R. SAHID  
PAUL C. SAUNDERS  
MARTIN L. SENZEL  
DOUGLAS D. BROADWATER  
ALAN C. STEPHENSON  
RICHARD L. HOFFMAN  
JOSEPH A. MULLINS  
MAX R. SHULMAN  
WILLIAM P. DICKEY  
STUART W. GOLD  
JOHN W. WHITE

COUNSEL  
CARLYLE E. MAW  
ALBERT R. CONNELLY  
FRANK H. DETWEILER  
GEORGE O. TYLER  
ROSWELL L. GILPATRICK  
L. R. BRESLIN, JR.  
GEORGE B. TURNER  
JOHN H. MORSE  
HAROLD R. MEDINA, JR.  
CHARLES R. LINTON  
ALLEN H. MERRILL  
4, PLACE DE LA CONCORDE  
75008 PARIS, FRANCE  
TELEPHONE: 265-81-54  
TELEX: 290530  
33 THROGMORTON STREET  
LONDON, EC2N 2BR, ENGLAND  
TELEPHONE 01-606-1421  
TELEX: 8814901  
ADDRESSES  
CRAVATH, N. Y.  
CRAVATH, PARIS  
CRAVATH, LONDON E. C. 2

RECORDATION NO. 11993 Filed 1425

JUL 11 1980 3 00 PM

INTERSTATE COMMERCE COMMISSION

RECEIVED

JUL 11 2 55 PM '80

Equipment Leasing Corporation.

I. C. C.  
FEE OPERATION BR.

The addresses of the parties to the aforementioned agreements are:

Lessee-Builder-Seller:

Seaboard Coast Line Railroad Company  
3600 West Broad Street  
Richmond, Virginia 23230.

Vendee-Lessor:

Cargill Equipment Leasing Corporation  
2301 Crosby Road  
Wayzata, Minnesota 55391

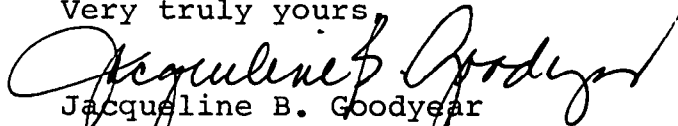
Agent-Vendor:

Mercantile-Safe Deposit and Trust Company  
P. O. Box 2258  
Baltimore, Maryland 21203.

The Hulks covered by the Transfer Agreement and the Hulk Purchase Agreement are listed in Exhibit A attached hereto. The reconstructed railroad equipment covered by the Reconstruction and Conditional Sale Agreement and the Lease are listed in Exhibit B attached hereto. The reconstructed railroad equipment bear the legend "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION".

Enclosed is our check for \$200 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,

  
Jacqueline B. Goodyear  
As Agent for Seaboard Coast Line  
Railroad Company

Ms. Agatha L. Mergenovich, Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423

Encls.

Exhibit A

RECEIVED

JUL 11 2 55 PM '80

I.C.O.  
FEE OPERATION BR.

<u>Quantity</u>	<u>Description</u>	<u>To Be Selected from Series</u> <u>Bearing Road Numbers</u>
600	70-ton Cushion Underframe Box Cars	SCL 635000 through 636199 and SCL 815000 through 816749
425	77-ton Open Top Wet Rock Hopper Cars	SCL 735600 through 736099

Exhibit B

RECEIVED

JUL 11 2 55 PM '80

I. C. C.  
FREE OPERATION BR.

<u>Quantity</u>	<u>AAR Mechanical Designation</u>	<u>Description</u>	<u>Lessee's Road Numbers (Inclusive)</u>
600	XL & XM	70-ton Cushion Underframe Box Cars	SCL 60550-60974 and 80600-80774
425	HMS	77-ton Open Top Wet Rock Hopper Cars	SCL 156150-156574

RECORDATION NO. 11993 <sup>B</sup> Filed 1425

JUL 11 1980 - 3 00 PM  
INTERSTATE COMMERCE COMMISSION

---

[CS&M Ref. 2043-987]

LEASE OF RAILROAD EQUIPMENT

Dated as of June 15, 1980

Between

SEABOARD COAST LINE RAILROAD COMPANY,  
as Lessee,

and

CARGILL EQUIPMENT LEASING CORPORATION,  
Lessor.

---

## LEASE OF RAILROAD EQUIPMENT

### TABLE OF CONTENTS\*

	<u>Page</u>
PARTIES .....	L-1
PREAMBLES .....	L-1
SECTION 1.	
Delivery and Acceptance of Units .....	L-1
SECTION 2.	
Rental .....	L-2
SECTION 3.	
Term of Lease .....	L-4
SECTION 4.	
Identification Marks .....	L-5
SECTION 5.	
Taxes .....	L-6
SECTION 6.	
Maintenance; Payment for Casualty	
Occurrences; Insurance .....	L-7
SECTION 7.	
Annual Reports .....	L-10
SECTION 8.	
Disclaimer of Warranties; Compliance	
with Laws and Rules; Indemnification .....	L-10
SECTION 9.	
Default .....	L-13
SECTION 10.	
Return of Units upon Default .....	L-17
SECTION 11.	
Assignment; Possession and Use .....	L-18
SECTION 12.	
Renewal Option; Right of First Refusal .....	L-20
SECTION 13.	
Return of Units upon Expiration of Term .....	L-22
SECTION 14.	
Recording; Expenses .....	L-24
SECTION 15.	
Interest on Overdue Rentals .....	L-24
SECTION 16.	
Notices .....	L-24
SECTION 17.	
Effect and Modification of Lease .....	L-25

	<u>Page</u>
SECTION 18.	
Definitions .....	L-25
SECTION 19.	
Execution .....	L-25
SECTION 20.	
Law Governing .....	L-26
TESTIMONIUM .....	L-26
SIGNATURES .....	L-26
SCHEDULE A--Specifications of the Equipment	L-29
SCHEDULE B--Casualty Value Percentages Schedule	L-30

LEASE OF RAILROAD EQUIPMENT, dated as of June 15, 1980, between SEABOARD COAST LINE RAILROAD COMPANY, a Virginia corporation (the "Lessee") and CARGILL EQUIPMENT LEASING CORPORATION, a Delaware corporation (the "Lessor").

The Lessee, the Lessor and MERCANTILE SAFE-DEPOSIT AND TRUST COMPANY, not in its individual capacity but solely as Agent (said bank as so acting, being hereinafter, together with its successors and assigns, called the "Vendor"), under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessor, the Lessee and the parties named in Schedule A thereto, are entering into a Reconstruction and Conditional Sale Agreement dated as of the date hereof (the "RCSA"), wherein the Vendor has agreed to sell to the Lessor its interest in the railroad equipment described in Schedule A thereto (the "Equipment") after it has been reconstructed (pursuant to the terms of the RCSA) from the hulks (the "Hulks") delivered to the Lessor pursuant to a Hulk Purchase Agreement dated as of the date hereof (the "Hulk Purchase Agreement") between the Lessor and the Lessee.

The Lessee desires to lease all the units of the Equipment as are delivered, accepted and settled for under the RCSA (the "Units"). The Lessor will assign certain rights in this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment") and the Lessee will consent thereto pursuant to the Consent and Agreement attached to the Lease Assignment (the "Consent").

In consideration of the agreements hereinafter set forth, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but subject to all the rights and remedies of the Vendor under the RCSA:

SECTION 1. Delivery and Acceptance of Units.

The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the RCSA. The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the RCSA. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery (the "Certificate of



Acceptance"), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

SECTION 2. Rental. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 3 interim and 20 consecutive semiannual payments. The interim payments are payable on February 1, 1981, and August 1, 1981, and on the Repayment Date (as defined in the Participation Agreement) (or as promptly thereafter as practicable). The 20 semiannual payments are payable on February 1 and August 1 in each year, commencing February 1, 1982, to and including August 1, 1991. The interim rental payment payable on February 1, 1981, shall be in an amount equal to the product of the Purchase Price (as such term is defined in the RCSA) for each Unit subject to the Lease multiplied by .03424657% for each calendar day elapsed from and including the date such Unit is settled for under the RCSA to but not including February 1, 1981. The interim payment on August 1, 1981, shall be in an amount equal to the sum of (i) the product of the Purchase Price for each Unit subject to this Lease settled for under the RCSA on or prior to February 1, 1981, multiplied by 6.25% and (ii) the product of the Purchase Price for each Unit subject to this Lease settled for under the RCSA after February 1, 1981, multiplied by .03424657% for each day elapsed from and including the date of settlement thereof and to but not including August 1, 1981. The interim payment payable on the Repayment Date (or as promptly thereafter as practicable) in respect of the Surplus Deposit shall be in an amount equal to the amount payable by the Lessor to the Vendor pursuant to clause (a) of the fourth paragraph of Paragraph 9 of the Participation Agreement plus an amount, if any, equal to the deficiency payable pursuant to the first paragraph of said Paragraph 9. The interim rental payments payable on February 1, 1981, and August 1, 1981, shall be increased by such amount, if any, equal to the amount required by the Lessor to make the payments provided for in clause (b) of the fourth paragraph of Paragraph 9 of the Participation Agreement. The 20 semiannual rental payments with respect to each Unit shall each be in an amount equal to 6.5852% of the Purchase Price of each such Unit then subject to this Lease; provided, however, that with respect to Units, if any, delivered on or after August 1, 1981, the semiannual rental payment due February 1, 1982, shall be in an amount equal to the product of the Purchase Price for each such

Unit multiplied by .0360832% for each day elapsed from and including the date such Unit is settled for under the RCSA and to but not including February 1, 1982 (as adjusted pursuant to the last sentence of this paragraph). The foregoing rental rates have been calculated on the assumption that (i) 72.064% of the Purchase Price of the Units will be provided by the Vendor out of Available Investors' Funds (as such term is defined in Article Three of the RCSA); (ii) 27.936% of the Purchase Price of the Units shall be paid by the Lessor; (iii) the interest payable on the CSA Indebtedness (as defined in the RCSA) shall be 12.5% per annum; and (iv) the closing dates for the Units will occur in accordance with Schedule B of the RCSA. If for any reason the Available Investors' Funds are less than contemplated and the Lessor pays more than 27.936% of the Purchase Price of any Unit pursuant to the third paragraph of Article 3 of the RCSA on a Closing Date (as such term is defined in the RCSA) or if the funds deposited by the Investors (as such term is defined in the Participation Agreement) bear an interest rate other than 12.5% per annum or if the closing dates for the Units do not occur in accordance with Schedule B of the RCSA, the Lessor and the Lessee agree that the rentals payable hereunder and the Casualty Value percentages set forth in Schedule B hereto will be adjusted, if necessary in the Lessor's opinion, in order that the Lessor's net aftertax return (computed on the same assumptions, including, without limitation, tax rates, as were utilized by the Lessor in establishing the lease rate for this transaction) will not be increased or decreased by reason thereof; provided, however, that the rentals and Casualty Value percentages, as so adjusted, shall be sufficient to satisfy the obligations of the Lessor under the RCSA, notwithstanding any limitation of liability contained therein.

If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, Richmond, Virginia, Minneapolis, Minnesota, or New York, New York, are authorized or obligated to remain closed.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due

to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or under the RCSA, or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or failure of title of the Lessor to any of the Units or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against Lessee's use of all or any of the Units, the taking or requisitioning of any of the Units by condemnation or otherwise, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever. All payments under the Lease shall be made by bank wire transfer of Federal or other funds immediately available at, and not later than 10:00 a.m. Baltimore, Maryland, time, in the city where such payments are due.

SECTION 3. Term of Lease. The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of Sections 6, 9 and 12 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due hereunder; provided, however, all the obligations of the Lessee, except for the payment of rent and the furnishing of annual reports, shall continue until surrender of the Units in accordance with Section 13 hereof.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the RCSA. If an event of default should occur under the RCSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

SECTION 4. Identification Marks. The Lessee, so long as this Lease shall remain in effect, will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed with the Interstate Commerce Commission" or other appropriate markings designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Vendor under the RCSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such legend shall have been so marked on both sides thereof and will replace promptly any such legend which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed by the Lessee in all public offices where this Lease and the RCSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to that effect and to the further effect that such filing, recordation and deposit will protect the Vendor's and the Lessor's interests in such Units and that no filing, recording, depositing or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Lessor in such Units.

Except as above provided, the Lessee, so long as this Lease shall remain in effect, will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its

affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

SECTION 5. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, Federal or foreign taxes (other than any United States Federal income tax and, to the extent that the Lessor receives credit therefor against its United States Federal income tax liability, any foreign income tax payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all state and city income taxes and franchise taxes measured by net income except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments, documentary stamp taxes, or license fees and any charges, fines or penalties in connection therewith ("impositions") now or hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the RCSA, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or of the Vendee under the RCSA. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Vendor pursuant to Arti-

cle 5 of the RCSA not covered by the foregoing paragraph of this Section 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 5.

In the event any reports with regard to impositions are required to be made on the basis of individual Units or otherwise, the Lessee will, where permitted to do so under applicable rules or regulations, make and timely file such reports in such manner as to show the interest of the Lessor and the Vendor in the Units as shall be satisfactory to the Lessor and the Vendor or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to the Lessor and the Vendor within a reasonable time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions, pursuant to this Section 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

The parties hereto acknowledge that the Units become a part of the mass of property used by the Lessee in its operations as a common carrier by rail. Consequently, the parties agree that the Lessee shall include the Units in the ad valorem tax returns to be filed by the Lessee in the applicable states or localities and that neither the Vendor nor the Vendee shall include the Units in any ad valorem tax returns filed by them in such states or localities.

SECTION 6. Maintenance; Payment for Casualty Occurrences; Insurance. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the

United States Government for a period which shall exceed the then remaining term of this Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days or until the end of the term of this Lease (each such occurrence being hereinafter called a "Casualty Occurrence") prior to the return of such Unit in the manner set forth in Section 13 hereof, the Lessee shall, within 30 days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Vendor in writing with respect thereto. Notwithstanding any such Casualty Occurrence, the Lessee shall continue making all payments provided for in this Lease in respect of such Unit until the rental payment date listed in Table 1 of Schedule B hereto next succeeding such notice. On such rental payment date the Lessee shall pay to the Lessor the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with Schedule B hereto, plus the rental payment or payments in respect of such Unit then due and payable. Upon the making of all such payments by the Lessee in respect of any Unit, the rental for such Unit shall thereafter cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent, to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable under the circumstances on an "as is, where is, and with all faults" basis in accordance with the Lessee's normal procedures. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the net proceeds of such sale after deductions of any cost or expense incurred in disposing of such Unit to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be an amount equal to the sum of (a) that percentage of the Purchase Price of such Unit as is set forth in Table 1 of Schedule B hereto opposite such date with respect to such Unit plus (b) that percentage, if any, of the Reconstruction Cost thereof as set forth in Table 2 of said Schedule B with respect to such Unit.

Whenever any Unit shall suffer a Casualty Occur-

rence at the end of the term of this Lease or after termination of this Lease and before such Unit shall have been returned in the manner provided in Section 13 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit set forth in Schedule B hereto as of the rental payment date immediately preceding such termination. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent, to dispose of any Unit suffering such Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is, and with all faults" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

Except as hereinabove in this Section 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the responsibility for and risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained insurance, in respect of the Units at the time subject hereto, in amounts and against risks as is consistent with prudent industry practice for Class I railroads but, in any event, at least in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it. The Lessee shall give the Lessor and the Vendor at least 30 days' prior written notice of any material change in coverage or cancelation of insurance; provided, however, that if it is not practicable for the Lessee to have knowledge of a material change or cancelation of insurance at least 30 days prior to the occurrence thereof, the Lessee shall give



the Lessor and the Vendor written notice as soon as the Lessee learns of such change or cancelation.

SECTION 7. Annual Reports. On or before March 31 in each year, commencing with the calendar year 1982, the Lessee will cause to be furnished to the Lessor and the Vendor (at the addresses shown in Section 16 hereof) an accurate statement, as of the preceding December 31, showing the amount, description and numbers of the Units (a) then leased hereunder and/or covered by the RCSA, (b) that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease in the case of the first such statement) and (c) then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs and setting forth such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, and stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings required by Section 4 hereof shall have been preserved or replaced. The Lessor and the Vendor shall have the right at its sole cost, risk and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto (including those relating to any use of the Units outside the United States) at such reasonable times as the Lessor or the Vendor may request during the continuance of this Lease.

SECTION 8. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE, OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly

or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation, or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units (the "Applicable Laws"), and in the event that, prior to the expiration of this Lease or any renewal thereof and the return of all Units as provided in Section 10 or 13 hereof, such laws or rules require any alteration, replacement, addition or modification of or to any part of any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the advance opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor, respectively, under this Lease or the RCSA. The Lessee, at its own cost and expense, may furnish additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the first sentence of this paragraph shall be owned by the Lessor, and the addi-

tions, modifications and improvements made by the Lessee under the second sentence of this paragraph shall be owned by the Lessee.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as a result of (i) the entering into or the performance of the RCSA, the Participation Agreement, The Hulk Purchase Agreement, or this Lease, or any of the instruments or agreements referred to therein or herein or contemplated thereby or hereby, (ii) the ownership of any Hulk or any Unit, (iii) the ordering, acquisition, use, operation, maintenance, condition, reconstruction, purchase, delivery, rejection, storage or return of any Hulk or any Unit, (iv) any accident in connection with the operation, use, condition, reconstruction, possession, storage or return of any Hulk or any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in Section 13 of this Lease, including without limitation any claim based upon the doctrines of product liability or strict or absolute liability in tort or by statute imposed, or (v) the transfer of title to the Equipment by the Vendor pursuant to any provision of the RCSA. The Lessor agrees to give the Lessee, promptly upon obtaining knowledge thereof, written notice of any claim or liability to be indemnified against hereunder. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the delivery of the Equipment or the full payment and performance of all obligations under this Lease and the Hulk Purchase Agreement or the expiration or termination of the term of this Lease and/or the Hulk Purchase Agreement, provided, however, that the foregoing indemnification shall not apply to any failure of payment of any of the principal or interest on the CSA Indebtedness. Nothing in this Section 8 shall constitute a guarantee by the Lessee of the CSA Indebtedness of the Lessor under the RCSA or a guarantee of the residual value of any Unit.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date

of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

SECTION 9. Default. If, during the continuance of this Lease, one or more of the following events (an "Event of Default") shall occur:

A. default shall be made in the payment of any amount provided for in Section 2, 6 or 12 hereof and such default shall continue for 10 days after receipt of written notice (whether by mail, telex, telegram or otherwise) or telephonic notice thereof by the Lessee (but without waiver of any interest or late charges);

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest therein, or of the right to possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee (and the Lessor, if such notice is given by the Vendor) specifying the default and demanding that the same be remedied;

D. a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease, the RCSA and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such

petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; or

E. any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Participation Agreement, the RCSA, or the Consent, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Participation Agreement, the RCSA, or the Consent), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Participation Agreement, the RCSA, and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

F. an event of default set forth in Article 14 of the RCSA shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder or under the Participation Agreement, the RCSA, or the Consent and shall not have been cured as provided for therein; or

G. any of the Lessee's representations or warranties made herein or any statement or certificate at any time given in writing pursuant hereto or in connection herewith shall be breached or found to be false or misleading in any material respect;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated; or (y) an amount equal to the excess, if

any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

Should the Lessee fail to make any payment or to do any act as provided by this Lease, then the Lessor shall have the right (but not the obligation), without notice to the Lessee of its intention to do so and without releasing the Lessee from any obligation hereunder to make or to do the same, to make advances to preserve the Equipment or the Lessor's title thereto, and to pay, purchase, contest or compromise any insurance premium, encumbrance, charge, tax, lien or other sum which in the judgment of the Lessor appears to affect the Equipment, and in exercising any such rights, the Lessor may insure any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by the Lessor shall be due and payable by the Lessee within ten (10) days of notice thereof.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee

hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

SECTION 10. Return of Units upon Default. If this Lease shall terminate pursuant to Section 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units so interchanged) place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease,



and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

The Lessee hereby waives any and all claims against the Vendor or the Lessor and their agents for damages of whatever nature in connection with any retaking of the Units in any reasonable manner.

All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the greater of (i) .0360832% of the Purchase Price of such Unit or (ii) the per diem interchange rate for such Unit for each such day, exceeds the actual earnings received by the Lessor on such Unit for each such day.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

SECTION 11. Assignment; Possession and Use.  
This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor

except upon written notice of such assignment from the Lessor. The rights of the Lessor hereunder (including, but not limited to, the rights under Sections 5, 6, 8 and 9 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Vendor as assignee under the Assignment in the manner and to the extent therein provided.

So long as the Lessee shall not be in default under this Lease and no event of default exists under the RCSA, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in any of the Units or sublease any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof; and any such assignment or transfer without said consent shall be void. The Lessee, at its own expense, will promptly discharge or cause to be duly discharged any and all sums claimed by any party which if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor after the date hereof or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units), upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor and the Vendor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

Subject to the terms of this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon the lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic and equipment, but only upon and subject to all the terms and conditions of this Lease, including the last paragraph of this Section 11, and the RCSA. The Lessee may receive and

retain compensation from other railroads so using any of the Units.

Nothing in this Section 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the railroad properties of the Lessee as an entirety or substantially as an entirety; provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

The Lessee agrees that during the term of this Lease, it will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America.

Section 12. Renewal Option; Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may elect, by written notice delivered to the Lessor not less than 180 days prior to the end of the original term of this Lease or the first extended term hereof, to extend the term of this Lease in respect of all, but not fewer than all, the Units covered by this Lease for one or two additional two-year periods commencing on the scheduled expiration of the original term or the extended term of this Lease, as the case may be, provided that the Lessee may not so elect to extend the term of this Lease for more than two such additional extended terms, at a rental payable in arrears in semiannual payments, in an amount equal to the "Fair Market Rental" of such Units as of the commencement of such extended term, such semi-annual payments to be made on February 1 and August 1 in each year of the applicable extended term.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than (i) a lessee currently in possession or (ii) a used equipment dealer) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder and provided further that the Lessee has not notified the Lessor of its intention to extend or further extend the term of the Lease as described in the first paragraph of this Section 12 then, in the event the Lessor elects to sell any Units to third parties at the expiration of the original or any extended term of this Lease, the Lessee shall be given written notice of such intention to sell not later than 120 days prior to the expiration of such term. In the event that the Lessor shall have received or shall receive, within 60 days of such notice of intention to sell, a bona fide offer in writing from another party unrelated to the Lessee to purchase such Units, the Lessor may, at its option, give written notice to the Lessee of such offer. If such notice is given, it shall include the price and terms and conditions of payment offered by the other party to the Lessor. The Lessee shall have the sole right and option to purchase all but not less than all the Units then subject to this Lease on the same terms as such offer or, if the Lessor presents no such offer, at the then Fair Market Value of such Units. The Lessee shall exercise such purchase right by delivery to the Lessor of a written notice within 90 days of receipt of notice of intention to sell from the Lessor, specifying a date of purchase at or after termination of such term of this Lease, but not later than 90 days after the expiration of such term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be further extended upon the same terms and conditions set forth herein from the date such notice is delivered to the Lessor until the date of such purchase. If the Lessee does not deliver such notice to the Lessor, all obligations of the Lessor under this paragraph shall terminate.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing purchaser (other than (i) a lessee currently in possession or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

If on or before 120 days prior to the expiration

of any term of this Lease, or any extended term, as the case may be, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental or, if on or before 30 days prior to the expiration of any term of this Lease, the Lessor and the Lessee are unable to agree upon the determination of the Fair Market Value, as the case may be, of the Units, such value shall be determined in accordance with the foregoing definitions, respectively, by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 35 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine such value of the Units within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of such value of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as such value. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and/or Fair Market Value, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessor and the Lessee.

Section 13. Return of Units upon Expiration of Term. After the expiration of the original or any extended

term of this Lease, the Lessee will have 45 days to marshall the Units (without being required to make any payment to Lessor in respect of the Units) and the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Units to the Lessor upon such storage tracks of the Lessee as the Lessee may designate and permit the Lessor to store each group (as defined below) of such Units on such tracks for a period not exceeding 150 days, and transport the Units in each such group, on a one-time basis at any time within such 150-day period, to one or more connecting carriers for shipment, all as directed by the Lessor, the movement and storage of each such group of Units to be at the expense and risk of the Lessee. A "group" of Units shall mean (i) the first 30% of the Units so delivered, (ii) the next 30% of the Units so delivered, (iii) the next 25% of the Units so delivered and, thereafter, each Unit so delivered will constitute a group. During any such storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this Section 13 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, and/or the applicable rules of any governmental agency or other organization with jurisdiction, and (iii) have removed therefrom by the Lessee without cost or expense to the Lessor all additions, modifications and improvements which the Lessee owns pursuant to Section 8 hereof. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 45 days after the end of the term of this Lease, or any extended term, then the Lessee shall pay the Lessor for each day thereafter an

amount equal to the greater of (i) .0360832% of the Purchase Price of such Unit or (ii) the per diem rental received from the service of such Unit for each such day. In addition, for each Unit that is loaded by the Lessee within 45 days after the end of the Lease, or any extended term, for each day during which the equipment is loaded the Lessee shall pay the Lessor the greater of the amounts specified in clauses (i) and (ii) of the preceding sentence.

Section 14. Recording; Expenses. The Lessee, at its own expense, will cause this Lease, the Transfer Agreement, the RCSA and any assignment hereof or thereof to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will undertake the filing, recording and depositing and refiling, rerecording and redepositing required of the Lessor under the RCSA and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease or the assignment hereof to the Vendor, or the RCSA; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, recording or depositing, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease, the Assignment, the Transfer Agreement and the RCSA shall be filed with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any unit.

Section 15. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations when due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 13.5% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

Section 16. Notices. Any instruction or notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at 2301 Crosby Road Wayzata,

Minnesota 55391, Attention of Vice President and General Manager;

(b) if to the Lessee, at 3600 West Broad Street  
Richmond, Virginia 23230, Attention of Mr. L. G.  
Anderson, Vice President and Treasurer;

(c) if to the Vendor, at P. O. Box 2258, Two  
Hopkins Plaza, Baltimore, Maryland 21203, Attention  
of Corporate Trust Department;

or addressed to any such party at such other address as  
such party shall hereafter furnish to the other party in  
writing.

Section 17. Effect and Modification of Lease.  
Except for the Participation Agreement, this Lease exclusively  
and completely states the rights of the Lessor and the Lessee  
with respect to the leasing of the Units and supersedes all  
other agreements, oral or written, with respect thereto. No  
variation or modification of this Lease and no waiver of any  
of its provisions or conditions shall be valid unless in  
writing and signed by duly authorized officers of the Lessor  
and the Lessee.

Section 18. Definitions. If and so long as  
this Lease is assigned to the Vendor (or any successor  
thereto) for collateral purposes, wherever the term  
"Lessor" is used in this Lease it shall also apply and  
refer to the Vendor and any successors thereto unless the  
context shall otherwise require and except that the Vendor  
shall not be subject to any liabilities or obligations  
under this Lease; and the fact that the Vendor is specifi-  
cally named in certain provisions shall not be construed  
to mean that the Vendor (and any successors thereto) is  
not entitled to the benefits of other provisions where  
only the Lessor is named or where only the Vendor, as the  
case may be, is named.

Section 19. Execution. This Lease may be executed  
in several counterparts, such counterparts together consti-  
tuting but one and the same instrument, but the counterpart  
delivered to the Vendor shall be deemed to be the original  
counterpart. It is not necessary that the parties hereto all  
sign the same counterpart as long as each party shall sign a  
counterpart and such counterpart is delivered to the Vendor  
or its counsel, whereupon this Lease shall become effective.



Although this Lease is dated as of the date first set forth above for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

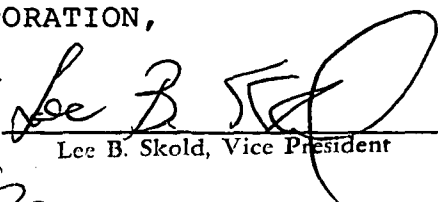
Section 20. Law Governing; Severability. The terms of this Lease and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

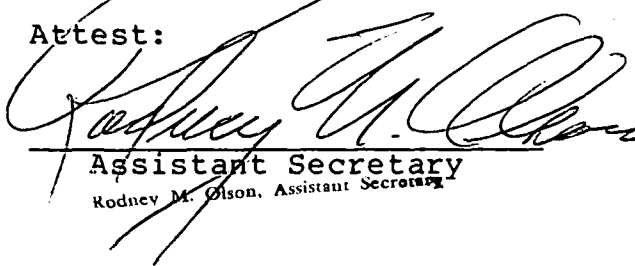
CARGILL EQUIPMENT LEASING  
CORPORATION,

by

  
Lee B. Skold, Vice President

[Corporate Seal]

Attest:

  
Assistant Secretary

Rodney M. Olson, Assistant Secretary

SEABOARD COAST LINE RAILROAD  
COMPANY,

by

[Corporate Seal]

Vice President and Treasurer

Attest:

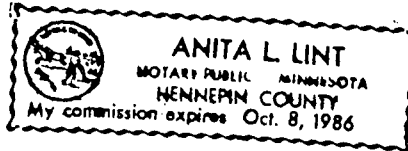
Assistant Secretary

STATE OF MINNESOTA, )  
 ) ss.:  
COUNTY OF HENNEPIN, )

On this 7<sup>th</sup> day of July, 1980, before me personally appeared Lee B. Hold, to me personally known, who, being by me duly sworn, says that he is Vice President of CARGILL EQUIPMENT LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Antia J. Lort  
Notary Public

[Notarial Seal]



COMMONWEALTH OF VIRGINIA, )  
 ) ss.:  
CITY OF RICHMOND, )

On this day of 1980, before me personally appeared LEONARD G. ANDERSON, to me personally known, who, being by me duly sworn, says that he is Vice President and Treasurer of SEABOARD COAST LINE RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that such instrument was this day signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

Lease of Railroad Equipment

SCHEDULE A

<u>Quantity</u>	<u>AAR Mechanical Designation</u>	<u>Description</u>	<u>Lessee's Road Numbers (Inclusive)</u>
600	XL & XM	70-ton Cushion Underframe Box Cars	SCL 60550-60974 and 80600-80774
425	HMS	77-ton Open Top Wet Rock Hopper Cars	SCL 156150-156574

Lease of Railroad Equipment

SCHEDULE B

Casualty Value Percentages Schedule

Table 1

<u>Rental Payment Date</u>	<u>Percentage</u>
2/1/81	86.229
8/1/81	86.437
2/1/82	84.664
8/1/82	84.871
2/1/83	81.959
8/1/83	81.218
2/1/84	81.290
8/1/84	78.987
2/1/85	73.292
8/1/85	71.145
2/1/86	70.631
8/1/86	67.116
2/1/87	60.821
8/1/87	57.573
2/1/88	56.434
8/1/88	51.840
2/1/89	44.890
8/1/89	40.553
2/1/90	35.532
8/1/90	30.612
2/1/91	25.312
8/1/91	20.000

Table 2

The percentages set forth in Table 1 of this Schedule B have been computed without regard to recapture of any investment credit described in Paragraph 14 of the Participation Agreement (relating to certain tax indemnities). Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence on or before the third, fifth or seventh Anniversary of the date of delivery and acceptance of such Unit shall be increased by the

applicable percentage of the Reconstruction Cost set forth below:

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Reconstruction Cost</u>
Third	18.51852%
Fifth	12.34569
Seventh	6.17283